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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

CHELSEY RICHARDSON,

Plaintiff and Respondent,

v.

AMBER CARDOZA,

Defendant and Appellant.

F076806

(Super. Ct. No. 2026863)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Stanislaus County. Marie Sovey Silveira, Judge.

The Bogan Law Firm and Tai C. Bogan for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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* Before Peña, Acting P.J., Meehan, J. and Snauffer, J.

Respondent Chelsey Richardson obtained a civil harassment restraining order against appellant Amber Cardoza. Cardoza appeals the court's order, arguing it was not supported by substantial evidence of harassment or that Richardson suffered substantial emotional distress. We find that there is substantial evidence to support granting the restraining order and affirm.

FACTUAL AND PROCEDURAL BACKGROUND¹

On September 26, 2017, Richardson filed a request for a civil harassment restraining order. Richardson requested the order against Cardoza, whom she described as a former friend. In the request, Richardson stated Cardoza harassed her by calling her employer and alleging that Richardson was using drugs, stealing medications from patients and taking and posting illicit photographs of patients on the Internet. Richardson also alleged Cardoza gave a person Richardson was dating explicit pictures of Richardson and threatened to "show up at [her] doorstep." The court denied Richardson's ex parte application for a temporary restraining order, and set a hearing for a permanent restraining order on October 19, 2017.

Cardoza filed a response to the request for a restraining order on October 17, 2017. In the response, Cardoza denied the allegations raised by Richardson. Cardoza refuted calling Richardson's work, but rather alleged Richardson was using cocaine frequently. Cardoza denied sending explicit photographs of Richardson with another man to Richardson's boyfriend, but admitted that she possessed explicit photos of Richardson and attached the photos to her response. Cardoza also provided screenshots of text message and Facebook messenger conversations with Richardson to show Richardson was sending Cardoza harassing messages. Cardoza concluded her response by stating

¹ A court reporter was not present at any of the hearings in the case. As such, reporter's transcripts of the hearings are not available. Instead, the parties signed and submitted an agreed statement setting forth the recitation of the events that occurred during the court proceedings. (See Cal. Rules of Court, rule 8.134.)

“[Richardson] has a serious mental problem, she is a pathological liar, manipulative, bipolar and should not be working in a psychiatric facility when she honestly needs to be a patient in one. [Richardson] needs some serious mental help!”

The court held the hearing on the restraining order and ordered Cardoza to cease harassment and contact with Richardson and Richardson’s employer for two years. Cardoza moved to terminate the restraining order and the court set a hearing on the motion on December 14, 2017. Cardoza asserted that she was not afforded due process because the copy of the restraining order served on her was incomplete and missing pages, that documents sent in support of the request for the restraining order were likely fraudulent, and Richardson had not proven, based on clear and convincing evidence, that harassment had occurred or resulted in substantial emotional distress. At the hearing the parties both presented witnesses and evidence. After arguments were made, the court denied the motion to terminate the restraining order. Cardoza filed a notice of the instant appeal on December 18, 2017.

According to the agreed statement of the parties, “[a]fter considering all the evidence from both hearings, the court determined that when Ms. Cardoza submitted sexually explicit photos to the court as evidence, that itself was ... continuing the harassment. And the fact that Ms. Richardson had been affected by the prior communication coupled with the sexually explicit photos made the court rule in favor of Ms. Richardson.” The court also found Richardson suffered from emotional distress when she was forced to discuss the phone calls her employer received.

DISCUSSION

I. Civil Harassment Injunctions and the Standard of Review

Code of Civil Procedure section 527.6,² subdivision (a)(1), provides that “[a] person who has suffered harassment as defined in subdivision (b) may seek a temporary restraining order and an order after hearing prohibiting harassment in this section.” The statute was enacted ““to protect the individual’s right to pursue safety, happiness and privacy as guaranteed by the California Constitution.”” (*Brekke v. Wills* (2005) 125 Cal.App.4th 1400, 1412.) “It does so by providing expedited injunctive relief to victims of harassment.” (*Ibid.*)

Section 527.6, subdivision (b)(3), defines the three qualifying types of harassment, “unlawful violence,” “a credible threat of violence,” and “a knowing and willful course of conduct.”³ “Unlawful violence” is defined as “any assault or battery, or stalking as prohibited in Section 646.9 of the Penal Code, but does not include lawful acts of self-defense or defense of others.” (*Id.*, subd. (b)(7).) A “[c]redible threat of violence” is defined as “a knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety or the safety of his or her immediate family, and that serves no legitimate purpose.” (*Id.*, subd. (b)(2).)

A course of harassing conduct is defined as “a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be that which would cause a reasonable person to suffer substantial emotional distress, and must actually

² All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

³ Section 527.6, subdivision (b), defines two different “courses of conduct.” It defines both a course of conduct of alarming, annoying and harassing behavior that qualifies as harassment under section 527.6, subdivision (a), and also defines a “[c]redible threat of violence” as a course of conduct that creates fear in a reasonable person. To prevent confusion, we will refer to the former as a course of harassing conduct and the latter a course of threatening conduct.

cause substantial emotional distress to the petitioner.” (§ 527.6, subd. (b)(3).) The statute further defines a course of conduct as a “pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including following or stalking an individual, making harassing telephone calls to an individual, or sending harassing correspondence to an individual by any means, including, but not limited to, the use of public or private mails, interoffice mail, facsimile, or email. Constitutionally protected activity is not included within the meaning of course of conduct.” (*Id.*, subd. (b)(1).)

When a party seeks such an injunction, the court must hold a hearing, receive relevant testimony, and issue the injunction if it finds, by clear and convincing evidence, that unlawful harassment exists. (§ 527.6, subs. (g), (i); *Nora v. Kaddo* (2004) 116 Cal.App.4th 1026, 1028.) We review the trial court’s decision granting a restraining order for substantial evidence. (*Harris v. Stampolis* (2016) 248 Cal.App.4th 484, 497.) ““The appropriate test on appeal is whether the findings (express and implied) that support the trial court’s entry of the restraining order are justified by substantial evidence in the record.”” (*Ibid.*) “[When] assessing whether substantial evidence supports the requisite elements of willful harassment, as defined in ... section 527.6, we review the evidence before the trial court in accordance with the customary rules of appellate review. We resolve all factual conflicts and questions of credibility in favor of the prevailing party and indulge in all legitimate and reasonable inferences to uphold the finding of the trial court if it is supported by substantial evidence which is reasonable, credible and of solid value.” (*Schild v. Rubin* (1991) 232 Cal.App.3d 755, 762 (*Schild*).) Appealed judgments and orders are presumed correct, and error must be affirmatively shown. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.)

II. Analysis

Cardoza claims the evidence presented did not establish harassment. With respect to the text message and Facebook messenger exchanges, Cardoza argues the statements

she made, including that she would “show up at Richardson’s doorstep” did not show she intended to threaten Richardson with physical harm. Cardoza denies making the calls to Richardson’s employer; however, if she did, she claims the calls were not harassment as they were not made directly to Richardson and were made for the purpose of protecting the safety of employer’s patients. With regard to the explicit photos, Cardoza admitted she had the photos in her possession, but argued someone else sent Richardson’s boyfriend the photos.

A. Substantial Evidence of Harassing Conduct

Cardoza first challenges the evidence presented supporting each instance of harassment. We lack a written order or a transcript of the court’s oral pronouncement of the order. Even though we lack information regarding what the court relied upon, we presume the judgment is correct, and resolve all fact disputes and questions of credibility in favor of the prevailing party if supported by substantial evidence. (*Denham v. Superior Court, supra*, 2 Cal.3d at p. 564; *Schild, supra*, 232 Cal.App.3d at p. 762.) In granting the restraining order, the trial court necessarily found that Cardoza engaged in harassment based on an adequate showing of unlawful violence, a credible threat of violence, or a knowing and willful course of harassing conduct. (§ 527.6, subd. (b)(3).)

Richardson did not present allegations of unlawful violence. She did, however, present evidence of one instance of a threat of violence based on Cardoza’s statement that she would show up at Richardson’s doorstep. To qualify as a credible threat of violence the statement must “place a reasonable person in fear for his or her safety or the safety of his or her immediate family, and that serves no legitimate purpose.” (§ 527.6, subd. (b)(2).) Cardoza admitted sending Richardson the message that she would show up at Richardson’s doorstep, but claims that she did not intend the message to be interpreted as a threat and that it was “vague and harmless.” Despite her insistence otherwise, the statement reasonably could be construed as a “knowing and willful statement that would place a reasonable person in fear for ... her safety” and that serves “no legitimate

purpose.” (*Ibid.*) Cardoza does not explain why she would need to communicate with Richardson in person, rather than electronically, and it would be reasonable to infer Cardoza’s purpose in going to Richardson’s house was to physically confront her. Providing the judgment with the presumption of correctness, the statement served as sufficient evidence of harassment by way of a credible threat of violence that would cause Richardson to fear for her safety.

While there is substantial evidence Cardoza made a credible threat of violence, there is more significant evidence she engaged in a course of harassing conduct under section 527.6, subdivision (b)(3). In addition to Cardoza’s threat that she would show up on Richardson’s doorstep, Cardoza contacted Richardson’s employer and boyfriend to disrupt her employment and her personal relationship.

The record amply demonstrates she engaged in a course of harassing conduct serving no legitimate purpose, evidencing a continuity of purpose that would cause a reasonable person to suffer substantial emotional distress and which actually caused substantial emotional distress to Richardson under section 527.6, subdivision (b)(3). Cardoza engaged in a course of harassing conduct by threatening to appear at Richardson’s house, making calls to Richardson’s employer, and sending explicit photos to Richardson’s boyfriend. (§ 527.6, subd. (b)(3).)

Whether the Facebook message threatening to show up at Richardson’s doorstep was a credible threat of violence, the message constituted “sending harassing correspondence to an individual by any means” under section 527.6, subdivision (b)(1) and can be considered as one of the acts composing the course of harassing conduct.

Cardoza alleges that she neither made nor had knowledge of the phone calls made to Richardson’s employer, but, if they did occur, they were not a pattern of harassment because they were sent to Richardson’s employer, and were sent for the purpose of protecting the patients at the facility. While Cardoza disagrees with the court’s determination that such behavior occurred, was attributable to her, and was harassing in

nature, we resolve all factual conflicts and questions of credibility in favor of the prevailing party when supported by substantial evidence. (*Schild, supra*, 232 Cal.App.3d at p. 762.) As substantial evidence exists, we may not second-guess the factual determinations made by the trial court. At the restraining order hearing, Richardson testified that she was humiliated when summoned by her employer to discuss anonymous phone calls the employer had received. Richardson also testified her employer's phone system identified the calls as coming from Cardoza's cell phone number. Even though Cardoza denied making the calls and testified that she was aware that Richardson's ex-boyfriend desired to call Richardson's employer, the trial court considered the evidence presented and determined Cardoza engaged in a harassing course of conduct. Cardoza argues that the evidence was not sufficient to support a showing of clear and convincing evidence of harassing behavior. However, applying the correct standards of review on appeal and considering all factual conflicts and questions of credibility in favor of Richardson, we find that substantial evidence supports Richardson's contention that Cardoza contacted the employer with the intent to interfere with Richardson's employment.

Moreover, even though the calls were made to Richardson's employer, rather than directly to Richardson, the calls can nevertheless be part of "a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose." (§ 527.6, subd. (b)(3).) Nothing in subdivision (b)(1) of section 527.6, requires the harassing course of conduct consist only of actions or communications made to the intended victim. (See, e.g., *Parisi v. Mazzaferro* (2016) 5 Cal.App.5th 1219, 1223–1224 [harassing course of conduct under § 527.6 included sending letters to realtors to interfere with the sale of victim's property and to victim's employer requesting he be fired]; *R.D. v. P.M.* (2011) 202 Cal.App.4th 181, 186–187 [harassing course of conduct under § 527.6 included distributing disparaging flyers at victim's office building and at victim's child's elementary school].)

Section 527.6, subdivision (b)(3), indicates that the harassing course of conduct must be directed at a specific person, but there is no indication that the harassing conduct could not consist of communications to others that would directly impact the victim.

Cardoza also denied being the one who sent sexually explicit photos to others and testified Richardson's ex-boyfriend may have distributed those photos. Regardless, the court held that Cardoza's submission of the photos into evidence at the restraining order hearing was a continuation of the pattern of harassment. Cardoza presented no argument in opposition of the court's finding that her conduct at the hearing was a continuation of the pattern of harassment.

Based on the evidence presented, the trial court could reasonably infer that Cardoza was engaged in a persistent effort to damage Richardson's reputation and interfere with her employment. Cardoza, by denying that she called Richardson's employer or sent the sexually explicit photos, contends that she did not engage in a course of harassing conduct. Moreover, Cardoza also argues that Richardson failed to provide evidence that she suffered any emotional distress, let alone substantial emotional distress as required by the statute. While Cardoza is entitled to her view of the evidence, that is not the standard we apply on appeal. Without the benefit of the trial transcripts and the reasoning of the court, we must presume that the trial court found Richardson provided evidence of substantial emotional distress. Based on the evidence presented that Cardoza's conduct negatively influenced Richardson's personal relationship and threatened her continued employment, substantial evidence supports the court's holding that the actions were harassing in nature and caused substantial emotional distress.

DISPOSITION

The judgment is affirmed. Richardson is entitled to her costs on appeal. (Cal. Rules of Court, rule 8.278(a)(2).)